

Introduced by Senator Galgiani

December 1, 2014

An act to amend Sections 1170 and 3550 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 6, as introduced, Galgiani. Parole: medical parole: compassionate release.

Existing law provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority. Existing law requires that a prisoner who is found to be permanently medically incapacitated, as specified, be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Existing law exempts a prisoner sentenced to death, a prisoner sentenced to life without the possibility of parole, and a prisoner who is serving a sentence for which parole is prohibited by initiative statute, from medical parole eligibility.

Existing law authorizes a court to resentence or recall the sentence of a prisoner if the court finds that the prisoner is terminally ill, as specified, or the prisoner is permanently medically incapacitated, as specified, and, in either case, the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety. Existing law exempts a prisoner sentenced to death or a term of life without the possibility of parole from eligibility for compassionate release pursuant to these provisions.

This bill would additionally exempt from medical parole eligibility and compassionate release eligibility a prisoner who was convicted of

the first degree murder of a peace officer or a person who had been a peace officer, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 1 of Chapter 612 of the Statutes of 2014, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment
28 in the state prison of any specification of three time periods, the
29 court shall sentence the defendant to one of the terms of
30 imprisonment specified unless the convicted person is given any
31 other disposition provided by law, including a fine, jail, probation,
32 or the suspension of imposition or execution of sentence or is
33 sentenced pursuant to subdivision (b) of Section 1168 because he

1 or she had committed his or her crime prior to July 1, 1977. In
2 sentencing the convicted person, the court shall apply the
3 sentencing rules of the Judicial Council. The court, unless it
4 determines that there are circumstances in mitigation of the
5 punishment prescribed, shall also impose any other term that it is
6 required by law to impose as an additional term. Nothing in this
7 article shall affect any provision of law that imposes the death
8 penalty, that authorizes or restricts the granting of probation or
9 suspending the execution or imposition of sentence, or expressly
10 provides for imprisonment in the state prison for life, except as
11 provided in paragraph (2) of subdivision (d). In any case in which
12 the amount of preimprisonment credit under Section 2900.5 or any
13 other provision of law is equal to or exceeds any sentence imposed
14 pursuant to this chapter, the entire sentence shall be deemed to
15 have been served and the defendant shall not be actually delivered
16 to the custody of the secretary. The court shall advise the defendant
17 that he or she shall serve a period of parole and order the defendant
18 to report to the parole office closest to the defendant's last legal
19 residence, unless the in-custody credits equal the total sentence,
20 including both confinement time and the period of parole. The
21 sentence shall be deemed a separate prior prison term under Section
22 667.5, and a copy of the judgment and other necessary
23 documentation shall be forwarded to the secretary.

24 (b) When a judgment of imprisonment is to be imposed and the
25 statute specifies three possible terms, the choice of the appropriate
26 term shall rest within the sound discretion of the court. At least
27 four days prior to the time set for imposition of judgment, either
28 party or the victim, or the family of the victim if the victim is
29 deceased, may submit a statement in aggravation or mitigation. In
30 determining the appropriate term, the court may consider the record
31 in the case, the probation officer's report, other reports, including
32 reports received pursuant to Section 1203.03, and statements in
33 aggravation or mitigation submitted by the prosecution, the
34 defendant, or the victim, or the family of the victim if the victim
35 is deceased, and any further evidence introduced at the sentencing
36 hearing. The court shall select the term which, in the court's
37 discretion, best serves the interests of justice. The court shall set
38 forth on the record the reasons for imposing the term selected and
39 the court may not impose an upper term by using the fact of any
40 enhancement upon which sentence is imposed under any provision

1 of law. A term of imprisonment shall not be specified if imposition
2 of sentence is suspended.

3 (c) The court shall state the reasons for its sentence choice on
4 the record at the time of sentencing. The court shall also inform
5 the defendant that as part of the sentence after expiration of the
6 term he or she may be on parole for a period as provided in Section
7 3000.

8 (d) (1) When a defendant subject to this section or subdivision
9 (b) of Section 1168 has been sentenced to be imprisoned in the
10 state prison and has been committed to the custody of the secretary,
11 the court may, within 120 days of the date of commitment on its
12 own motion, or at any time upon the recommendation of the
13 secretary or the Board of Parole Hearings, recall the sentence and
14 commitment previously ordered and resentence the defendant in
15 the same manner as if he or she had not previously been sentenced,
16 provided the new sentence, if any, is no greater than the initial
17 sentence. The court resentencing under this subdivision shall apply
18 the sentencing rules of the Judicial Council so as to eliminate
19 disparity of sentences and to promote uniformity of sentencing.
20 Credit shall be given for time served.

21 (2) (A) (i) When a defendant who was under 18 years of age
22 at the time of the commission of the offense for which the
23 defendant was sentenced to imprisonment for life without the
24 possibility of parole has served at least 15 years of that sentence,
25 the defendant may submit to the sentencing court a petition for
26 recall and resentencing.

27 (ii) Notwithstanding clause (i), this paragraph shall not apply
28 to defendants sentenced to life without parole for an offense where
29 the defendant tortured, as described in Section 206, his or her
30 victim or the victim was a public safety official, including any law
31 enforcement personnel mentioned in Chapter 4.5 (commencing
32 with Section 830) of Title 3, or any firefighter as described in
33 Section 245.1, as well as any other officer in any segment of law
34 enforcement who is employed by the federal government, the state,
35 or any of its political subdivisions.

36 (B) The defendant shall file the original petition with the
37 sentencing court. A copy of the petition shall be served on the
38 agency that prosecuted the case. The petition shall include the
39 defendant's statement that he or she was under 18 years of age at
40 the time of the crime and was sentenced to life in prison without

1 the possibility of parole, the defendant's statement describing his
2 or her remorse and work towards rehabilitation, and the defendant's
3 statement that one of the following is true:

4 (i) The defendant was convicted pursuant to felony murder or
5 aiding and abetting murder provisions of law.

6 (ii) The defendant does not have juvenile felony adjudications
7 for assault or other felony crimes with a significant potential for
8 personal harm to victims prior to the offense for which the sentence
9 is being considered for recall.

10 (iii) The defendant committed the offense with at least one adult
11 codefendant.

12 (iv) The defendant has performed acts that tend to indicate
13 rehabilitation or the potential for rehabilitation, including, but not
14 limited to, availing himself or herself of rehabilitative, educational,
15 or vocational programs, if those programs have been available at
16 his or her classification level and facility, using self-study for
17 self-improvement, or showing evidence of remorse.

18 (C) If any of the information required in subparagraph (B) is
19 missing from the petition, or if proof of service on the prosecuting
20 agency is not provided, the court shall return the petition to the
21 defendant and advise the defendant that the matter cannot be
22 considered without the missing information.

23 (D) A reply to the petition, if any, shall be filed with the court
24 within 60 days of the date on which the prosecuting agency was
25 served with the petition, unless a continuance is granted for good
26 cause.

27 (E) If the court finds by a preponderance of the evidence that
28 the statements in the petition are true, the court shall hold a hearing
29 to consider whether to recall the sentence and commitment
30 previously ordered and to resentence the defendant in the same
31 manner as if the defendant had not previously been sentenced,
32 provided that the new sentence, if any, is not greater than the initial
33 sentence. Victims, or victim family members if the victim is
34 deceased, shall retain the rights to participate in the hearing.

35 (F) The factors that the court may consider when determining
36 whether to recall and resentence include, but are not limited to,
37 the following:

38 (i) The defendant was convicted pursuant to felony murder or
39 aiding and abetting murder provisions of law.

1 (ii) The defendant does not have juvenile felony adjudications
2 for assault or other felony crimes with a significant potential for
3 personal harm to victims prior to the offense for which the sentence
4 is being considered for recall.

5 (iii) The defendant committed the offense with at least one adult
6 codefendant.

7 (iv) Prior to the offense for which the sentence is being
8 considered for recall, the defendant had insufficient adult support
9 or supervision and had suffered from psychological or physical
10 trauma, or significant stress.

11 (v) The defendant suffers from cognitive limitations due to
12 mental illness, developmental disabilities, or other factors that did
13 not constitute a defense, but influenced the defendant's
14 involvement in the offense.

15 (vi) The defendant has performed acts that tend to indicate
16 rehabilitation or the potential for rehabilitation, including, but not
17 limited to, availing himself or herself of rehabilitative, educational,
18 or vocational programs, if those programs have been available at
19 his or her classification level and facility, using self-study for
20 self-improvement, or showing evidence of remorse.

21 (vii) The defendant has maintained family ties or connections
22 with others through letter writing, calls, or visits, or has eliminated
23 contact with individuals outside of prison who are currently
24 involved with crime.

25 (viii) The defendant has had no disciplinary actions for violent
26 activities in the last five years in which the defendant was
27 determined to be the aggressor.

28 (G) The court shall have the discretion to recall the sentence
29 and commitment previously ordered and to resentence the
30 defendant in the same manner as if the defendant had not
31 previously been sentenced, provided that the new sentence, if any,
32 is not greater than the initial sentence. The discretion of the court
33 shall be exercised in consideration of the criteria in subparagraph
34 (B). Victims, or victim family members if the victim is deceased,
35 shall be notified of the resentencing hearing and shall retain their
36 rights to participate in the hearing.

37 (H) If the sentence is not recalled, the defendant may submit
38 another petition for recall and resentencing to the sentencing court
39 when the defendant has been committed to the custody of the
40 department for at least 20 years. If recall and resentencing is not

1 granted under that petition, the defendant may file another petition
2 after having served 24 years. The final petition may be submitted,
3 and the response to that petition shall be determined, during the
4 25th year of the defendant's sentence.

5 (I) In addition to the criteria in subparagraph (F), the court may
6 consider any other criteria that the court deems relevant to its
7 decision, so long as the court identifies them on the record,
8 provides a statement of reasons for adopting them, and states why
9 the defendant does or does not satisfy the criteria.

10 (J) This subdivision shall have retroactive application.

11 (e) (1) Notwithstanding any other law and consistent with
12 paragraph (1) of subdivision (a), if the secretary or the Board of
13 Parole Hearings or both determine that a prisoner satisfies the
14 criteria set forth in paragraph (2), the secretary or the board may
15 recommend to the court that the prisoner's sentence be recalled.

16 (2) (A) The court shall have the discretion to resentence or
17 recall if the court finds that the facts described in ~~subparagraphs~~
18 ~~(A) and (B) or subparagraphs (B) and (C)~~ clauses (i) and (ii) or
19 clauses (ii) and (iii) exist:

20 ~~(A)~~

21 (i) The prisoner is terminally ill with an incurable condition
22 caused by an illness or disease that would produce death within
23 six months, as determined by a physician employed by the
24 department.

25 ~~(B)~~

26 (ii) The conditions under which the prisoner would be released
27 or receive treatment do not pose a threat to public safety.

28 ~~(C)~~

29 (iii) The prisoner is permanently medically incapacitated with
30 a medical condition that renders him or her permanently unable
31 to perform activities of basic daily living, and results in the prisoner
32 requiring 24-hour total care, including, but not limited to, coma,
33 persistent vegetative state, brain death, ventilator-dependency, loss
34 of control of muscular or neurological function, and that
35 incapacitation did not exist at the time of the original sentencing.

36 (B) *This subdivision does not apply to the following:*

37 (i) *A prisoner sentenced to death or a term of life without the*
38 *possibility of parole.*

39 (ii) *(I) A prisoner who was convicted of first degree murder if*
40 *the victim was a peace officer, as defined in Chapter 4.5*

1 *(commencing with Section 830) of Title 3, who was killed while*
2 *engaged in the performance of his or her duties, and the individual*
3 *knew, or reasonably should have known, that the victim was a*
4 *peace officer engaged in the performance of his or her duties.*

5 *(II) The victim was a peace officer or had been a peace officer,*
6 *as defined in Chapter 4.5 (commencing with Section 830) of Title*
7 *3, and was intentionally murdered in retaliation for the*
8 *performance of his or her official duties, and the defendant was*
9 *sentenced on or after January 1, 2016.*

10 ~~The~~

11 *(C) The Board of Parole Hearings shall make findings pursuant*
12 *to this subdivision before making a recommendation for resentence*
13 *or recall to the court. ~~This subdivision does not apply to a prisoner~~*
14 *~~sentenced to death or a term of life without the possibility of parole.~~*

15 *(3) Within 10 days of receipt of a positive recommendation by*
16 *the secretary or the board, the court shall hold a hearing to consider*
17 *whether the prisoner's sentence should be recalled.*

18 *(4) Any physician employed by the department who determines*
19 *that a prisoner has six months or less to live shall notify the chief*
20 *medical officer of the prognosis. If the chief medical officer*
21 *concurs with the prognosis, he or she shall notify the warden.*
22 *Within 48 hours of receiving notification, the warden or the*
23 *warden's representative shall notify the prisoner of the recall and*
24 *resentencing procedures, and shall arrange for the prisoner to*
25 *designate a family member or other outside agent to be notified*
26 *as to the prisoner's medical condition and prognosis, and as to the*
27 *recall and resentencing procedures. If the inmate is deemed*
28 *mentally unfit, the warden or the warden's representative shall*
29 *contact the inmate's emergency contact and provide the information*
30 *described in paragraph (2).*

31 *(5) The warden or the warden's representative shall provide the*
32 *prisoner and his or her family member, agent, or emergency*
33 *contact, as described in paragraph (4), updated information*
34 *throughout the recall and resentencing process with regard to the*
35 *prisoner's medical condition and the status of the prisoner's recall*
36 *and resentencing proceedings.*

37 *(6) Notwithstanding any other provisions of this section, the*
38 *prisoner or his or her family member or designee may*
39 *independently request consideration for recall and resentencing*
40 *by contacting the chief medical officer at the prison or the*

1 secretary. Upon receipt of the request, the chief medical officer
2 and the warden or the warden's representative shall follow the
3 procedures described in paragraph (4). If the secretary determines
4 that the prisoner satisfies the criteria set forth in paragraph (2), the
5 secretary or board may recommend to the court that the prisoner's
6 sentence be recalled. The secretary shall submit a recommendation
7 for release within 30 days in the case of inmates sentenced to
8 determinate terms and, in the case of inmates sentenced to
9 indeterminate terms, the secretary shall make a recommendation
10 to the Board of Parole Hearings with respect to the inmates who
11 have applied under this section. The board shall consider this
12 information and make an independent judgment pursuant to
13 paragraph (2) and make findings related thereto before rejecting
14 the request or making a recommendation to the court. This action
15 shall be taken at the next lawfully noticed board meeting.

16 (7) Any recommendation for recall submitted to the court by
17 the secretary or the Board of Parole Hearings shall include one or
18 more medical evaluations, a postrelease plan, and findings pursuant
19 to paragraph (2).

20 (8) If possible, the matter shall be heard before the same judge
21 of the court who sentenced the prisoner.

22 (9) If the court grants the recall and resentencing application,
23 the prisoner shall be released by the department within 48 hours
24 of receipt of the court's order, unless a longer time period is agreed
25 to by the inmate. At the time of release, the warden or the warden's
26 representative shall ensure that the prisoner has each of the
27 following in his or her possession: a discharge medical summary,
28 full medical records, state identification, parole medications, and
29 all property belonging to the prisoner. After discharge, any
30 additional records shall be sent to the prisoner's forwarding
31 address.

32 (10) The secretary shall issue a directive to medical and
33 correctional staff employed by the department that details the
34 guidelines and procedures for initiating a recall and resentencing
35 procedure. The directive shall clearly state that any prisoner who
36 is given a prognosis of six months or less to live is eligible for
37 recall and resentencing consideration, and that recall and
38 resentencing procedures shall be initiated upon that prognosis.

39 (f) Notwithstanding any other provision of this section, for
40 purposes of paragraph (3) of subdivision (h), any allegation that

1 a defendant is eligible for state prison due to a prior or current
2 conviction, sentence enhancement, or because he or she is required
3 to register as a sex offender shall not be subject to dismissal
4 pursuant to Section 1385.

5 (g) A sentence to state prison for a determinate term for which
6 only one term is specified, is a sentence to state prison under this
7 section.

8 (h) (1) Except as provided in paragraph (3), a felony punishable
9 pursuant to this subdivision where the term is not specified in the
10 underlying offense shall be punishable by a term of imprisonment
11 in a county jail for 16 months, or two or three years.

12 (2) Except as provided in paragraph (3), a felony punishable
13 pursuant to this subdivision shall be punishable by imprisonment
14 in a county jail for the term described in the underlying offense.

15 (3) Notwithstanding paragraphs (1) and (2), where the defendant
16 (A) has a prior or current felony conviction for a serious felony
17 described in subdivision (c) of Section 1192.7 or a prior or current
18 conviction for a violent felony described in subdivision (c) of
19 Section 667.5, (B) has a prior felony conviction in another
20 jurisdiction for an offense that has all the elements of a serious
21 felony described in subdivision (c) of Section 1192.7 or a violent
22 felony described in subdivision (c) of Section 667.5, (C) is required
23 to register as a sex offender pursuant to Chapter 5.5 (commencing
24 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
25 and as part of the sentence an enhancement pursuant to Section
26 186.11 is imposed, an executed sentence for a felony punishable
27 pursuant to this subdivision shall be served in state prison.

28 (4) Nothing in this subdivision shall be construed to prevent
29 other dispositions authorized by law, including pretrial diversion,
30 deferred entry of judgment, or an order granting probation pursuant
31 to Section 1203.1.

32 (5) (A) Unless the court finds that, in the interests of justice, it
33 is not appropriate in a particular case, the court, when imposing a
34 sentence pursuant to paragraph (1) or (2), shall suspend execution
35 of a concluding portion of the term for a period selected at the
36 court's discretion.

37 (B) The portion of a defendant's sentenced term that is
38 suspended pursuant to this paragraph shall be known as mandatory
39 supervision, and, unless otherwise ordered by the court, shall
40 commence upon release from physical custody or an alternative

1 custody program, whichever is later. During the period of
2 mandatory supervision, the defendant shall be supervised by the
3 county probation officer in accordance with the terms, conditions,
4 and procedures generally applicable to persons placed on probation,
5 for the remaining unserved portion of the sentence imposed by the
6 court. The period of supervision shall be mandatory, and may not
7 be earlier terminated except by court order. Any proceeding to
8 revoke or modify mandatory supervision under this subparagraph
9 shall be conducted pursuant to either subdivisions (a) and (b) of
10 Section 1203.2 or Section 1203.3. During the period when the
11 defendant is under such supervision, unless in actual custody
12 related to the sentence imposed by the court, the defendant shall
13 be entitled to only actual time credit against the term of
14 imprisonment imposed by the court. Any time period which is
15 suspended because a person has absconded shall not be credited
16 toward the period of supervision.

17 (6) The sentencing changes made by the act that added this
18 subdivision shall be applied prospectively to any person sentenced
19 on or after October 1, 2011.

20 (7) The sentencing changes made to paragraph (5) by the act
21 that added this paragraph shall become effective and operative on
22 January 1, 2015, and shall be applied prospectively to any person
23 sentenced on or after January 1, 2015.

24 (i) This section shall remain in effect only until January 1, 2017,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before that date, deletes or extends that date.

27 SEC. 2. Section 1170 of the Penal Code, as amended by Section
28 2 of Chapter 612 of the Statutes of 2014, is amended to read:

29 1170. (a) (1) The Legislature finds and declares that the
30 purpose of imprisonment for crime is punishment. This purpose
31 is best served by terms proportionate to the seriousness of the
32 offense with provision for uniformity in the sentences of offenders
33 committing the same offense under similar circumstances. The
34 Legislature further finds and declares that the elimination of
35 disparity and the provision of uniformity of sentences can best be
36 achieved by determinate sentences fixed by statute in proportion
37 to the seriousness of the offense as determined by the Legislature
38 to be imposed by the court with specified discretion.

39 (2) Notwithstanding paragraph (1), the Legislature further finds
40 and declares that programs should be available for inmates,

1 including, but not limited to, educational programs, that are
2 designed to prepare nonviolent felony offenders for successful
3 reentry into the community. The Legislature encourages the
4 development of policies and programs designed to educate and
5 rehabilitate nonviolent felony offenders. In implementing this
6 section, the Department of Corrections and Rehabilitation is
7 encouraged to give priority enrollment in programs to promote
8 successful return to the community to an inmate with a short
9 remaining term of commitment and a release date that would allow
10 him or her adequate time to complete the program.

11 (3) In any case in which the punishment prescribed by statute
12 for a person convicted of a public offense is a term of imprisonment
13 in the state prison of any specification of three time periods, the
14 court shall sentence the defendant to one of the terms of
15 imprisonment specified unless the convicted person is given any
16 other disposition provided by law, including a fine, jail, probation,
17 or the suspension of imposition or execution of sentence or is
18 sentenced pursuant to subdivision (b) of Section 1168 because he
19 or she had committed his or her crime prior to July 1, 1977. In
20 sentencing the convicted person, the court shall apply the
21 sentencing rules of the Judicial Council. The court, unless it
22 determines that there are circumstances in mitigation of the
23 punishment prescribed, shall also impose any other term that it is
24 required by law to impose as an additional term. Nothing in this
25 article shall affect any provision of law that imposes the death
26 penalty, that authorizes or restricts the granting of probation or
27 suspending the execution or imposition of sentence, or expressly
28 provides for imprisonment in the state prison for life, except as
29 provided in paragraph (2) of subdivision (d). In any case in which
30 the amount of preimprisonment credit under Section 2900.5 or any
31 other provision of law is equal to or exceeds any sentence imposed
32 pursuant to this chapter, the entire sentence shall be deemed to
33 have been served and the defendant shall not be actually delivered
34 to the custody of the secretary. The court shall advise the defendant
35 that he or she shall serve a period of parole and order the defendant
36 to report to the parole office closest to the defendant's last legal
37 residence, unless the in-custody credits equal the total sentence,
38 including both confinement time and the period of parole. The
39 sentence shall be deemed a separate prior prison term under Section

1 667.5, and a copy of the judgment and other necessary
2 documentation shall be forwarded to the secretary.

3 (b) When a judgment of imprisonment is to be imposed and the
4 statute specifies three possible terms, the court shall order
5 imposition of the middle term, unless there are circumstances in
6 aggravation or mitigation of the crime. At least four days prior to
7 the time set for imposition of judgment, either party or the victim,
8 or the family of the victim if the victim is deceased, may submit
9 a statement in aggravation or mitigation to dispute facts in the
10 record or the probation officer's report, or to present additional
11 facts. In determining whether there are circumstances that justify
12 imposition of the upper or lower term, the court may consider the
13 record in the case, the probation officer's report, other reports,
14 including reports received pursuant to Section 1203.03, and
15 statements in aggravation or mitigation submitted by the
16 prosecution, the defendant, or the victim, or the family of the victim
17 if the victim is deceased, and any further evidence introduced at
18 the sentencing hearing. The court shall set forth on the record the
19 facts and reasons for imposing the upper or lower term. The court
20 may not impose an upper term by using the fact of any
21 enhancement upon which sentence is imposed under any provision
22 of law. A term of imprisonment shall not be specified if imposition
23 of sentence is suspended.

24 (c) The court shall state the reasons for its sentence choice on
25 the record at the time of sentencing. The court shall also inform
26 the defendant that as part of the sentence after expiration of the
27 term he or she may be on parole for a period as provided in Section
28 3000.

29 (d) (1) When a defendant subject to this section or subdivision
30 (b) of Section 1168 has been sentenced to be imprisoned in the
31 state prison and has been committed to the custody of the secretary,
32 the court may, within 120 days of the date of commitment on its
33 own motion, or at any time upon the recommendation of the
34 secretary or the Board of Parole Hearings, recall the sentence and
35 commitment previously ordered and resentence the defendant in
36 the same manner as if he or she had not previously been sentenced,
37 provided the new sentence, if any, is no greater than the initial
38 sentence. The court resentencing under this subdivision shall apply
39 the sentencing rules of the Judicial Council so as to eliminate

1 disparity of sentences and to promote uniformity of sentencing.
2 Credit shall be given for time served.

3 (2) (A) (i) When a defendant who was under 18 years of age
4 at the time of the commission of the offense for which the
5 defendant was sentenced to imprisonment for life without the
6 possibility of parole has served at least 15 years of that sentence,
7 the defendant may submit to the sentencing court a petition for
8 recall and resentencing.

9 (ii) Notwithstanding clause (i), this paragraph shall not apply
10 to defendants sentenced to life without parole for an offense where
11 the defendant tortured, as described in Section 206, his or her
12 victim or the victim was a public safety official, including any law
13 enforcement personnel mentioned in Chapter 4.5 (commencing
14 with Section 830) of Title 3, or any firefighter as described in
15 Section 245.1, as well as any other officer in any segment of law
16 enforcement who is employed by the federal government, the state,
17 or any of its political subdivisions.

18 (B) The defendant shall file the original petition with the
19 sentencing court. A copy of the petition shall be served on the
20 agency that prosecuted the case. The petition shall include the
21 defendant's statement that he or she was under 18 years of age at
22 the time of the crime and was sentenced to life in prison without
23 the possibility of parole, the defendant's statement describing his
24 or her remorse and work towards rehabilitation, and the defendant's
25 statement that one of the following is true:

26 (i) The defendant was convicted pursuant to felony murder or
27 aiding and abetting murder provisions of law.

28 (ii) The defendant does not have juvenile felony adjudications
29 for assault or other felony crimes with a significant potential for
30 personal harm to victims prior to the offense for which the sentence
31 is being considered for recall.

32 (iii) The defendant committed the offense with at least one adult
33 codefendant.

34 (iv) The defendant has performed acts that tend to indicate
35 rehabilitation or the potential for rehabilitation, including, but not
36 limited to, availing himself or herself of rehabilitative, educational,
37 or vocational programs, if those programs have been available at
38 his or her classification level and facility, using self-study for
39 self-improvement, or showing evidence of remorse.

1 (C) If any of the information required in subparagraph (B) is
2 missing from the petition, or if proof of service on the prosecuting
3 agency is not provided, the court shall return the petition to the
4 defendant and advise the defendant that the matter cannot be
5 considered without the missing information.

6 (D) A reply to the petition, if any, shall be filed with the court
7 within 60 days of the date on which the prosecuting agency was
8 served with the petition, unless a continuance is granted for good
9 cause.

10 (E) If the court finds by a preponderance of the evidence that
11 the statements in the petition are true, the court shall hold a hearing
12 to consider whether to recall the sentence and commitment
13 previously ordered and to resentence the defendant in the same
14 manner as if the defendant had not previously been sentenced,
15 provided that the new sentence, if any, is not greater than the initial
16 sentence. Victims, or victim family members if the victim is
17 deceased, shall retain the rights to participate in the hearing.

18 (F) The factors that the court may consider when determining
19 whether to recall and resentence include, but are not limited to,
20 the following:

21 (i) The defendant was convicted pursuant to felony murder or
22 aiding and abetting murder provisions of law.

23 (ii) The defendant does not have juvenile felony adjudications
24 for assault or other felony crimes with a significant potential for
25 personal harm to victims prior to the offense for which the sentence
26 is being considered for recall.

27 (iii) The defendant committed the offense with at least one adult
28 codefendant.

29 (iv) Prior to the offense for which the sentence is being
30 considered for recall, the defendant had insufficient adult support
31 or supervision and had suffered from psychological or physical
32 trauma, or significant stress.

33 (v) The defendant suffers from cognitive limitations due to
34 mental illness, developmental disabilities, or other factors that did
35 not constitute a defense, but influenced the defendant's
36 involvement in the offense.

37 (vi) The defendant has performed acts that tend to indicate
38 rehabilitation or the potential for rehabilitation, including, but not
39 limited to, availing himself or herself of rehabilitative, educational,
40 or vocational programs, if those programs have been available at

1 his or her classification level and facility, using self-study for
2 self-improvement, or showing evidence of remorse.

3 (vii) The defendant has maintained family ties or connections
4 with others through letter writing, calls, or visits, or has eliminated
5 contact with individuals outside of prison who are currently
6 involved with crime.

7 (viii) The defendant has had no disciplinary actions for violent
8 activities in the last five years in which the defendant was
9 determined to be the aggressor.

10 (G) The court shall have the discretion to recall the sentence
11 and commitment previously ordered and to resentence the
12 defendant in the same manner as if the defendant had not
13 previously been sentenced, provided that the new sentence, if any,
14 is not greater than the initial sentence. The discretion of the court
15 shall be exercised in consideration of the criteria in subparagraph
16 (B). Victims, or victim family members if the victim is deceased,
17 shall be notified of the resentencing hearing and shall retain their
18 rights to participate in the hearing.

19 (H) If the sentence is not recalled, the defendant may submit
20 another petition for recall and resentencing to the sentencing court
21 when the defendant has been committed to the custody of the
22 department for at least 20 years. If recall and resentencing is not
23 granted under that petition, the defendant may file another petition
24 after having served 24 years. The final petition may be submitted,
25 and the response to that petition shall be determined, during the
26 25th year of the defendant's sentence.

27 (I) In addition to the criteria in subparagraph (F), the court may
28 consider any other criteria that the court deems relevant to its
29 decision, so long as the court identifies them on the record,
30 provides a statement of reasons for adopting them, and states why
31 the defendant does or does not satisfy the criteria.

32 (J) This subdivision shall have retroactive application.

33 (e) (1) Notwithstanding any other law and consistent with
34 paragraph (1) of subdivision (a), if the secretary or the Board of
35 Parole Hearings or both determine that a prisoner satisfies the
36 criteria set forth in paragraph (2), the secretary or the board may
37 recommend to the court that the prisoner's sentence be recalled.

38 (2) (A) The court shall have the discretion to resentence or
39 recall if the court finds that the facts described in ~~subparagraphs~~

1 ~~(A) and (B) or subparagraphs (B) and (C)~~ *clauses (i) and (ii) or*
2 *clauses (ii) and (iii) exist:*

3 ~~(A)~~

4 *(i) The prisoner is terminally ill with an incurable condition*
5 *caused by an illness or disease that would produce death within*
6 *six months, as determined by a physician employed by the*
7 *department.*

8 ~~(B)~~

9 *(ii) The conditions under which the prisoner would be released*
10 *or receive treatment do not pose a threat to public safety.*

11 ~~(C)~~

12 *(iii) The prisoner is permanently medically incapacitated with*
13 *a medical condition that renders him or her permanently unable*
14 *to perform activities of basic daily living, and results in the prisoner*
15 *requiring 24-hour total care, including, but not limited to, coma,*
16 *persistent vegetative state, brain death, ventilator-dependency, loss*
17 *of control of muscular or neurological function, and that*
18 *incapacitation did not exist at the time of the original sentencing.*

19 *(B) This subdivision does not apply to the following:*

20 *(i) A prisoner sentenced to death or a term of life without the*
21 *possibility of parole.*

22 *(ii) (I) A prisoner who was convicted of first degree murder if*
23 *the victim was a peace officer, as defined in Chapter 4.5*
24 *(commencing with Section 830) of Title 3, who was killed while*
25 *engaged in the performance of his or her duties, and the individual*
26 *knew, or reasonably should have known, that the victim was a*
27 *peace officer engaged in the performance of his or her duties.*

28 *(II) The victim was a peace officer or had been a peace officer,*
29 *as defined in Chapter 4.5 (commencing with Section 830) of Title*
30 *3, and was intentionally murdered in retaliation for the*
31 *performance of his or her official duties, and the defendant was*
32 *sentenced on or after January 1, 2016.*

33 ~~The~~

34 *(C) The Board of Parole Hearings shall make findings pursuant*
35 *to this subdivision before making a recommendation for resentence*
36 *or recall to the court. This subdivision does not apply to a prisoner*
37 *sentenced to death or a term of life without the possibility of parole.*

38 *(3) Within 10 days of receipt of a positive recommendation by*
39 *the secretary or the board, the court shall hold a hearing to consider*
40 *whether the prisoner's sentence should be recalled.*

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or

1 more medical evaluations, a postrelease plan, and findings pursuant
2 to paragraph (2).

3 (8) If possible, the matter shall be heard before the same judge
4 of the court who sentenced the prisoner.

5 (9) If the court grants the recall and resentencing application,
6 the prisoner shall be released by the department within 48 hours
7 of receipt of the court's order, unless a longer time period is agreed
8 to by the inmate. At the time of release, the warden or the warden's
9 representative shall ensure that the prisoner has each of the
10 following in his or her possession: a discharge medical summary,
11 full medical records, state identification, parole medications, and
12 all property belonging to the prisoner. After discharge, any
13 additional records shall be sent to the prisoner's forwarding
14 address.

15 (10) The secretary shall issue a directive to medical and
16 correctional staff employed by the department that details the
17 guidelines and procedures for initiating a recall and resentencing
18 procedure. The directive shall clearly state that any prisoner who
19 is given a prognosis of six months or less to live is eligible for
20 recall and resentencing consideration, and that recall and
21 resentencing procedures shall be initiated upon that prognosis.

22 (f) Notwithstanding any other provision of this section, for
23 purposes of paragraph (3) of subdivision (h), any allegation that
24 a defendant is eligible for state prison due to a prior or current
25 conviction, sentence enhancement, or because he or she is required
26 to register as a sex offender shall not be subject to dismissal
27 pursuant to Section 1385.

28 (g) A sentence to state prison for a determinate term for which
29 only one term is specified, is a sentence to state prison under this
30 section.

31 (h) (1) Except as provided in paragraph (3), a felony punishable
32 pursuant to this subdivision where the term is not specified in the
33 underlying offense shall be punishable by a term of imprisonment
34 in a county jail for 16 months, or two or three years.

35 (2) Except as provided in paragraph (3), a felony punishable
36 pursuant to this subdivision shall be punishable by imprisonment
37 in a county jail for the term described in the underlying offense.

38 (3) Notwithstanding paragraphs (1) and (2), where the defendant
39 (A) has a prior or current felony conviction for a serious felony
40 described in subdivision (c) of Section 1192.7 or a prior or current

1 conviction for a violent felony described in subdivision (c) of
2 Section 667.5, (B) has a prior felony conviction in another
3 jurisdiction for an offense that has all the elements of a serious
4 felony described in subdivision (c) of Section 1192.7 or a violent
5 felony described in subdivision (c) of Section 667.5, (C) is required
6 to register as a sex offender pursuant to Chapter 5.5 (commencing
7 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
8 and as part of the sentence an enhancement pursuant to Section
9 186.11 is imposed, an executed sentence for a felony punishable
10 pursuant to this subdivision shall be served in state prison.

11 (4) Nothing in this subdivision shall be construed to prevent
12 other dispositions authorized by law, including pretrial diversion,
13 deferred entry of judgment, or an order granting probation pursuant
14 to Section 1203.1.

15 (5) (A) Unless the court finds, in the interest of justice, that it
16 is not appropriate in a particular case, the court, when imposing a
17 sentence pursuant to paragraph (1) or (2), shall suspend execution
18 of a concluding portion of the term for a period selected at the
19 court's discretion.

20 (B) The portion of a defendant's sentenced term that is
21 suspended pursuant to this paragraph shall be known as mandatory
22 supervision, and, unless otherwise ordered by the court, shall
23 commence upon release from physical custody or an alternative
24 custody program, whichever is later. During the period of
25 mandatory supervision, the defendant shall be supervised by the
26 county probation officer in accordance with the terms, conditions,
27 and procedures generally applicable to persons placed on probation,
28 for the remaining unserved portion of the sentence imposed by the
29 court. The period of supervision shall be mandatory, and may not
30 be earlier terminated except by court order. Any proceeding to
31 revoke or modify mandatory supervision under this subparagraph
32 shall be conducted pursuant to either subdivisions (a) and (b) of
33 Section 1203.2 or Section 1203.3. During the period when the
34 defendant is under such supervision, unless in actual custody
35 related to the sentence imposed by the court, the defendant shall
36 be entitled to only actual time credit against the term of
37 imprisonment imposed by the court. Any time period which is
38 suspended because a person has absconded shall not be credited
39 toward the period of supervision.

1 (6) The sentencing changes made by the act that added this
2 subdivision shall be applied prospectively to any person sentenced
3 on or after October 1, 2011.

4 (7) The sentencing changes made to paragraph (5) by the act
5 that added this paragraph shall become effective and operative on
6 January 1, 2015, and shall be applied prospectively to any person
7 sentenced on or after January 1, 2015.

8 (i) This section shall become operative on January 1, 2017.

9 SEC. 3. Section 3550 of the Penal Code is amended to read:

10 3550. (a) Notwithstanding any other provision of law, except
11 as provided in subdivision (b), ~~any prisoner who~~ if the head
12 physician of ~~the institution where the~~ *an institution in which a*
13 ~~prisoner is located~~ *incarcerated* determines, as provided in this
14 section, *that the prisoner* is permanently medically incapacitated
15 with a medical condition that renders him or her permanently
16 unable to perform activities of basic daily living, and results in the
17 prisoner requiring 24-hour care, and that incapacitation did not
18 exist at the time of sentencing, *the prisoner* shall be granted
19 medical parole if the Board of Parole Hearings determines that the
20 conditions under which ~~the prisoner~~ *he or she* would be released
21 would not reasonably pose a threat to public safety.

22 ~~(b) Subdivision (a) shall not apply to any prisoner sentenced to~~
23 ~~death or life in prison without possibility of parole or to any inmate~~
24 ~~who is serving a sentence for which parole, pursuant to subdivision~~
25 ~~(a), is prohibited by any initiative statute. The provisions of this~~
26 ~~section shall not be construed to alter or diminish the rights~~
27 ~~conferred under the Victim's Bill of Rights Act of 2008: Marsy's~~
28 ~~Law.~~

29 *(b) This section does not alter or diminish the rights conferred*
30 *under the Victims' Bill of Rights Act of 2008 (Marsy's Law).*
31 *Subdivision (a) does not apply to any of the following:*

32 *(1) A prisoner sentenced to death or life in prison without*
33 *possibility of parole.*

34 *(2) A prisoner who is serving a sentence for which parole,*
35 *pursuant to subdivision (a), is prohibited by any initiative statute.*

36 *(3) (A) A prisoner who was convicted of first degree murder if*
37 *the victim was a peace officer, as defined in Chapter 4.5*
38 *(commencing with Section 830) of Title 3, who was killed while*
39 *engaged in the performance of his or her duties, and the individual*

1 *knew, or reasonably should have known, that the victim was a*
2 *peace officer engaged in the performance of his or her duties.*

3 *(B) The victim was a peace officer or had been a peace officer,*
4 *as defined in Chapter 4.5 (commencing with Section 830) of Title*
5 *3, and was intentionally murdered in retaliation for the*
6 *performance of his or her official duties, and the defendant was*
7 *sentenced on or after January 1, 2016.*

8 (c) When a physician employed by the Department of
9 Corrections and Rehabilitation who is the primary care provider
10 ~~for an inmate identifies an inmate~~ *a prisoner identifies a prisoner*
11 that he or she believes meets the medical criteria for medical parole
12 specified in subdivision (a), the primary care physician shall
13 recommend to the head physician of the institution where the
14 prisoner is located that the prisoner be referred to the Board of
15 Parole Hearings for consideration for medical parole. Within 30
16 days of receiving that recommendation, if the head physician of
17 the institution concurs in the recommendation of the primary care
18 physician, he or she shall refer the matter to the Board of Parole
19 Hearings using a standardized form and format developed by the
20 department, and if the head physician of the institution does not
21 concur in the recommendation, he or she shall provide the primary
22 care physician with a written explanation of the reasons for denying
23 the referral.

24 (d) Notwithstanding any other provisions of this section, the
25 prisoner or his or her family member or designee may
26 independently request consideration for medical parole by
27 contacting the head physician at the prison or the department.
28 Within 30 days of receiving the request, the head physician of the
29 institution shall, in consultation with the prisoner's primary care
30 physician, make a determination regarding whether the prisoner
31 meets the criteria for medical parole as specified in subdivision
32 (a) and, if the head physician of the institution determines that the
33 prisoner satisfies the criteria set forth in subdivision (a), he or she
34 shall refer the matter to the Board of Parole Hearings using a
35 standardized form and format developed by the department. If the
36 head physician of the institution does not concur in the
37 recommendation, he or she shall provide the prisoner or his or her
38 family member or designee with a written explanation of the
39 reasons for denying the application.

1 (e) The Department of Corrections and Rehabilitation shall
2 complete parole plans for inmates referred to the Board of Parole
3 Hearings for medical parole consideration. The parole plans shall
4 include, but not be limited to, the inmate's plan for residency and
5 medical care.

6 (f) Notwithstanding any other law, medical parole hearings shall
7 be conducted by two-person panels consisting of at least one
8 commissioner. In the event of a tie vote, the matter shall be referred
9 to the full board for a decision. Medical parole hearings may be
10 heard in absentia.

11 (g) Upon receiving a recommendation from the head physician
12 of the institution where a prisoner is located for the prisoner to be
13 granted medical parole pursuant to subdivision (c) or (d), the board,
14 as specified in subdivision (f), shall make an independent judgment
15 regarding whether the conditions under which the inmate would
16 be released pose a reasonable threat to public safety, and make
17 written findings related thereto.

18 (h) Notwithstanding any other provision of law, the board or
19 the Division of Adult Parole Operations shall have the authority
20 to impose any reasonable conditions on prisoners subject to medical
21 parole supervision pursuant to subdivision (a), including, but not
22 limited to, the requirement that the parolee submit to electronic
23 monitoring. As a further condition of medical parole, pursuant to
24 subdivision (a), the parolee may be required to submit to an
25 examination by a physician selected by the board for the purpose
26 of diagnosing the parolee's current medical condition. In the event
27 such an examination takes place, a report of the examination and
28 diagnosis shall be submitted to the board by the examining
29 physician. If the board determines, based on that medical
30 examination, that the person's medical condition has improved to
31 the extent that the person no longer qualifies for medical parole,
32 the board shall return the person to the custody of the department.

33 (1) Notwithstanding any other provision of law establishing
34 maximum periods for parole, a prisoner sentenced to a determinate
35 term who is placed on medical parole supervision prior to the
36 earliest possible release date and who remains eligible for medical
37 parole, shall remain on medical parole, pursuant to subdivision
38 (a), until that earliest possible release date, at which time the
39 parolee shall commence serving that period of parole provided by,

1 and under the provisions of, Chapter 8 (commencing with Section
2 3000) of Title 1.

3 (2) Notwithstanding any other provisions of law establishing
4 maximum periods for parole, a prisoner sentenced to an
5 indeterminate term who is placed on medical parole supervision
6 prior to the prisoner's minimum eligible parole date, and who
7 remains eligible for medical parole, shall remain on medical parole
8 pursuant to subdivision (a) until that minimum eligible parole date,
9 at which time the parolee shall be eligible for parole consideration
10 under all other provisions of Chapter 8 (commencing with Section
11 3000) of Title 1.

12 (i) The Department of Corrections and Rehabilitation shall, at
13 the time a prisoner is placed on medical parole supervision pursuant
14 to subdivision (a), ensure that the prisoner has applied for any
15 federal entitlement programs for which the prisoner is eligible,
16 and has in his or her possession a discharge medical summary, full
17 medical records, parole medications, and all property belonging
18 to the prisoner that was under the control of the department. Any
19 additional records shall be sent to the prisoner's forwarding address
20 after release to health care-related parole supervision.

21 (j) The provisions for medical parole set forth in this title shall
22 not affect an inmate's eligibility for any other form of parole or
23 release provided by law.

24 (k) (1) Notwithstanding any other provision of law, the
25 Department of Corrections and Rehabilitation shall give notice to
26 the county of commitment and the proposed county of release, if
27 that county is different than the county of commitment, of any
28 medical parole hearing as described in subdivision (f), and of any
29 medical parole release as described in subdivision (g).

30 (2) Notice shall be made at least 30 days, or as soon as feasible,
31 prior to the time any medical parole hearing or medical parole
32 release is scheduled for an inmate receiving medical parole
33 consideration, regardless of whether the inmate is sentenced either
34 determinately or indeterminately.